

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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JOSHUA ACEVEDO, a minor by  
YLUMINADA MOJICA and JULIO  
ACEVEDO, as the biological parents of  
JOSHUA ACEVEDO,

Plaintiff,

v.

FEDERAL EXPRESS CORPORATION,

Defendant.

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**Hon. Dennis M. Cavanaugh**

**OPINION**

Civ. No. 10-4046 (DMC) (JAD)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon Plaintiffs Joshua Acevedo, Yluminada Mojica and Julio Acevedo's ("Plaintiffs") Motion to Remand this Proceeding to the Superior Court of New Jersey, Law Division, Bergen County. No oral argument was heard pursuant to Federal Rule of Civil Procedure 78. For the reasons stated below Plaintiffs' motion is **denied**.

**I. BACKGROUND**<sup>1</sup>

On July 25, 2007, Joshua Acevedo's ("Joshua") attorney sent a package via Defendant Federal Express Corporation ("Federal Express") for priority overnight delivery to the Clerk of the United States Court of Federal Claims. Compl. ¶¶ 2, 5. Though the package was to arrive the following day, it was lost by Defendant in transit and never recovered. Compl. ¶¶ 5, 6. The package

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<sup>1</sup> The facts in the Background section have been taken from the parties' submissions.

contained a Petition for Compensation to the National Vaccine Compensation Program on behalf of Joshua, who suffered injuries following the administration of his routine childhood vaccines at the age of two months. Compl. ¶ 2. The statute of limitations was to run on Joshua's vaccine-related claim on June 28, 2007. Compl. ¶ 3. Plaintiffs were not notified about the loss of the package until June 29, 2007, four days after the package was mailed and one day after the statute of limitations on the vaccine claim had expired. Compl. 6. As a result of the loss of the package, and the delay in informing Plaintiffs about the loss such that a new Petition could not be timely filed, the statute of limitations on Joshua's claim expired and his Petition was dismissed by the Court of Federal Claims. Compl. ¶ 8. The Federal Circuit affirmed the dismissal, finding that the vaccine program did not provide for tolling of the statute of limitations for any reason. Id.

Plaintiffs filed the present action in the Superior Court of New Jersey, Law Division, Bergen County on June 4, 2010, alleging claims of fraudulent misrepresentation, detrimental reliance, breach of guaranty and warranty, false representation, wilful, wanton and reckless conduct and consumer fraud. Pls.' Br. 2-3. Defendant subsequently removed the action to this Court on August 6, 2010 on the basis of federal question jurisdiction under 28 U.S.C. § 1331. Notice of Removal ¶ 4. Defendant asserts that subject matter jurisdiction is appropriate because "the claims asserted by plaintiffs . . . are governed by principles of federal common law applicable to shipments made in interstate commerce by a federally certified air carrier . . . ." Id. at ¶ 5.

## **II. DISCUSSION**

A claim that arises under federal common law is a permissible basis for federal question jurisdiction under 28 U.S.C. § 1331 so long as the claim "demonstrates on the face of the complaint

a sufficiently proximate federal interest.” Treiber & Straub, Inc. v. United Parcel Serv., Inc., 474 F.3d 379, 383 (7th Cir. 2007) (citation and internal quotation marks omitted); Sam L. Majors Jewelers v. ABX, Inc., 117 F.3d 922, 926-27 (5th Cir. 1997) (“The Supreme Court has made it clear that notwithstanding Erie, federal common law causes of action continue to exist when a federal rule of decision is ‘necessary to protect uniquely federal interests.’” (quoting Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 426 (1964))). Several circuits have noted that the federal interest for shipments by air carrier is the same “as the one that underlies the Carmack Amendment for ground carriers: a need for uniformity in interstate shipping and commerce.” Treiber & Straub, 474 F.3d at 383-84; Sam L. Majors Jewelers, 117 F.3d at 929. Moreover, “[t]he Third Circuit has explicitly held that an action arising from an air carrier’s loss of goods is governed by federal common law and not state law.” Bonafield v. United Parcel Serv., Inc., No. 02-4454 (JAP), 2002 U.S. Dist. LEXIS 24058, at \*4 (Nov. 19, 2002).

Plaintiffs attempt to distinguish the well-established case law supporting federal jurisdiction by arguing that those cases involve situations where valuable goods, such as jewelry, were lost in transit while here documents without any intrinsic value were lost. However, Plaintiffs have not offered any sound reasoning or case law to support their contention. A federal cause of action exists for loss by air carriers in order to promote uniformity in shipping and commerce. The Court finds no reason to carve out any exception to the rule, particularly where it would serve to undercut this federal interest. Accordingly, the Court finds that removal of this action was proper on the basis of federal question jurisdiction.

### **III. CONCLUSION**

For the reasons stated, Plaintiffs' motion is **denied**.

S/ Dennis M. Cavanaugh  
Dennis M. Cavanaugh, U.S.D.J.

Date: April 18, 2011  
Orig.: Clerk  
cc: All Counsel of Record  
Hon. Joseph A. Dickson, U.S.M.J.  
File